LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 18 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 454

WEYMAN O. WILKES,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition For a Writ of Certiorari Directed To The Appellate Department of the Superior Court, County of Los Angeles, State of California

WEYMAN O. WILKES
c/o Cletus J. Hanifin
1725 N. Los Robles
San Marino, California

Petitioner, Pro Se

Jeffries Banknote Company, Los Angeles — MA 7-9514

SUBJECT INDEX

	Page
Opinion below	1
Jurisdiction	2
Question presented	2
Statute involved	3
Statement of facts	3
Reasons for granting the writ	8
Conclusion	8

Appendix A — Statutes ..... App. p. 1

AUTHORITIES CITED

Cases

	Page
People v. Cahan, 44 Cal.2d 434, 282 P.2d 905, 50 A.L.R.2d 513	5
People v. Contreras, 154 Cal.App.2d 321, 315 P.2d 916	6
People v. Denne, 141 Cal.App.2d 499, 297 P.2d 451	6
People v. Hernandez, 229 Cal.App.2d 143, 40 Cal.Rptr. 100	2, 7
People v. Robarge, 151 Cal.App.2d 660, 312 P.2d 70	6
People v. Triche, 148 Cal.App.2d 198, 306 P.2d 616	6
Priestly v. Superior Court, 50 Cal.2d 812, 330 P.2d 39	6

Statutes

Constitution of the United States, Fourth Amendment	2, 3, 4, 5, 6, 7, 8, App. p. 1
28 United States Code, Section 1257 (3)	2, App. p. 1
Business and Professions Code of the State of California, Section 2141	3, App. p. 1

Rules

Rules of the Supreme Court of the United States:

Rule 22	2
Rule 39 (2)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. .....

WEYMAN O. WILKES,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition For a Writ of Certiorari Directed To The Appellate Department of the Superior Court, County of Los Angeles, State of California.

Petitioner prays that a writ of certiorari issue to review the judgment of the Appellate Department of the Superior Court, County of Los Angeles, State of California, entered in the above-entitled case on April 6, 1966 and the Denial of the Request to Certify to the District Court of Appeal of the State of California, which was entered on April 19, 1966.

Citations to Opinions Below

Neither the opinion of the Appellate Department of the Superior Court, County of Los Angeles, State of

California, nor the Denial of the Request to Certify to the District Court of Appeal of the State of California was written.

Jurisdiction

The denial of the petition for rehearing was entered on April 19, 1966. On July 19, 1966, an Application for an Extension of Time in Which to File the Petition for Writ of Certiorari was submitted to the Supreme Court of the United States. This was received in the Office of the Clerk of the Supreme Court of the United States on July 21, 1966, three days beyond the ninety day period, along with a check in the amount of $100.00 for filing fees. Petitioner respectfully requests that this Honorable Court waive the untimely filing and accept the above Petition for a Writ of Certiorari, as it may under Rule 39(2) and Rule 22, Rules of Court. The jurisdiction of this Court is invoked under *28 U. S. C., Section 1257(3)*.

Question Presented

Are state prisoners on parole to be denied the protection of the Fourth Amendment to the Constitution of the United States so that they are excepted from the state and federal decisions outlawing evidence illegally obtained? If so, can this illegally obtained evidence be used against them *only* for the purpose of a parole violation, or can it also be introduced to obtain a conviction on a fresh criminal prosecution? *Peo. v. Hernandez*, 229 Cal.App.2d 143, 40 Cal. Rptr. 100 (the leading California case in point), holds that the requirement of reasonable or probable cause does not apply to the search

of a paroled prisoner, nor does it bar prosecution use of evidence produced by that search in a new and different criminal prosecution.

Statute Involved

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated; and no warrants shall issue, but on probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons and things to be seized.

Fourth Amendment to The Constitution of The United States.

Statement of Facts

Defendant stands convicted of a violation of Section 2141, Business and Professions Code of the State of California. This is one of the sections prohibiting the practice of medicine without a license (See Appendix A). Defendant on February 11, 1965 was on California State parole. Matthew D. Cohn was his parole officer. Cohn went to a building owned by the defendant at 310 South San Gabriel Boulevard, San Gabriel, California, and took with him an investigator from the Board of Medical Examiners, investigators from the Pharmacy Board, two detectives from the Alhambra Police Department, and an investigator for the State of California, Department of Professional Vocational Standards, Division of Investigation. Cohn had no search warrant, nor was permission to search given to him. A search was

instituted and the contract referred to as Exhibit 7 was found on the defendant's property. Defendant's conviction in the instant action could well have been obtained solely on the introduction of this contract, which was obtained in violation of defendant's rights under the *Fourth Amendment, The Constitution of the United States.*

Cohn stated, "I went to the office to take Mr. Wilkes into custody." [R.T. 138-19] Over objection, this contract was introduced into evidence by the prosecution. Virginia Cook Hanifin, an attorney, filed a Declaration in Support of a Motion for a New Trial in which she stated, "That I was present at the time of the arrest of Weyman Otis Wilkes and talked to Mr. Cohn; that at that time he told me he had nothing on which to hold Weyman Otis Wilkes; he said that if one of the other officers wanted to have Weyman Otis Wilkes arrested he would hold him on a parole violation, but that he himself had nothing to violate him on; that later on that same day he advised me that one of the officers wished to have him held and he was filing a parole violation . . ."

To substantiate the truth of Mrs. Hanifin's declaration, the facts as shown in Defendant's Declaration in Support of the Motion for a New Trial showed that Cohn took defendant into custody and held him seven (7) weeks without filing an Order of Suspension or Revocation, and that defendant's counsel finally procured a Writ of Habeas Corpus and defendant was released on said writ because no violation had been filed against him.

Defendant contends that the evidence obtained by a parole officer from his parolee without a warrant or permission should be restricted to the sphere of parole administration.

Here the contract, People's Exhibit 7, was obtained by the Parole Officer Cohn without permission from the defendant and without any search warrant. We do not contend that this could not have been used for the purpose of violating the defendant. We understand that entering into a contract without the consent of his parole officer was sufficient grounds for the parole officer to violate the defendant. However, this contract (People's Exhibit 7) was not used for the purpose of violating defendant. Instead this evidence was used as a foundation for a fresh criminal prosecution and conviction, i.e. the charge in the instant case.

And, according to California case law, such evidence can be admitted, thus violating the Fourth Amendment of The Constitution of the United States.

A history of the California case law in this area is as follows:

In 1955, *People v. Cahan,* 44 Cal.2d 434, 282 P.2d 905, 50 A.L.R. 2d 513, established the rule in California that evidence obtained in violation of the Fourth Amendment guaranty against unreasonable search and seizure is inadmissible in criminal trials. Among the spate of decisions which followed *Cahan* were four dealing with "search and seizure" contentions raised by paroled state prisioners. These four decisions occurred in 1956 and 1957.

First was *People v. Denne,* 141 Cal.App.2d 499, 297 P.2d 451, in which the court assumed, *arguendo,* that Fourth Amendment guaranties could be asserted by a parolee; holding, however, that a warrantless search by the parole officer was reasonable because of the special relationship between the parolee and the authorities who supervised his conduct on parole. The *Denne* case upheld evidentiary use of narcotics uncovered by a parole officer who had gone to the defendant's apartment to take him into custody, and had searched the apartment in his absence.

Similarly, in *People v. Robarge,* 151 Cal.App.2d 660, 312 P.2d 70, and *People v. Contreras,* 154 Cal.App.2d 321, 315 P.2d 916, the parole officer had discovered narcotics in the course of a search incidental to the defendant's apprehension for a parole violation. In all three cases the search was a by product of the parole officer's prior determination, upon probable cause, to apprehend the parolee.

People v. Triche, 148 Cal.App.2d 198, 306 P.2d 616, represents a variation. There the parole officer had gone to defendant's premises, not to make an arrest, but in the course of surveillance. His warrantless search revealed narcotics. Nevertheless, in the *Triche* case, as in *Denne, Robarge* and *Contreras,* the search was held to be reasonable because of the parole officer's special supervisory and visatorial powers. All four of these decisions assumed the necessity of some kind of probable cause. These four decisions antedated *Priestly v. Superior Court,* 50 Cal.2d 812, 330 P.2d 39, decided in 1958. *Priestly* is simply a manifestation of a general

exclusionary doctrine, barring evidentiary use of evidence produced by an unconstitutional search and seizure. Where the officer has no warrant, his search meets Fourth Amendment standards of reasonableness only if it is incidental to an arrest made upon probable cause.

In *People v. Hernandez*, 229 Cal.App.2d 143, 40 Cal. Rptr. 100, Hernandez was, at the time of his apprehension, a paroled prisoner. Heroin was seized in violation of the Fourth Amendment of The Constitution of the United States, and the Court held he might not assert Fourth Amendment guarantees as to illegal search and seizure against correctional authorities, to prevent its introduction into evidence against him in a fresh prosecution. It was argued that the close scrutiny available to the parole authorities should be restricted to the sphere of parole administration. The heroin in Hernandez' possession led to results other than parole revocation, serving as foundation for a fresh criminal prosecution and conviction. However, the Court allowed this.

With this backlog of cases depriving parolees of any Fourth Amendment to the Constitution of the United States guarantees, the trial court in the instant case merely followed the ruling case law in admitting illegally obtained evidence against a former parolee to form the basis for a fresh criminal prosecution.

Defendant contends that evidence obtained by a parole officer from his parolee, without a warrant or permission, should be restricted to the sphere of parole administration, and that criminal prosecution of a parolee

should be accompanied by the procedural safeguards and guarantees attending criminal prosecutions generally.

Reasons for Granting The Writ

The Supreme Court of the United States should grant certiorari to defendant, and correct the erroneous series of decisions denying Fourth Amendment guarantees to paroled prisoners. This is an important question, and the California state courts have resolved this question against granting Fourth Amendment guarantees to any paroled prisoner. When Fourth Amendment guarantees have been asserted in the California State Courts by paroled prisoners, these have been consistently rejected, as is shown by the decisions recited above. The Constitution of the United States merely says (in the Fourth Amendment) "The right of the people to be secure . . .". It says nothing about restricting Fourth Amendment guarantees to any class of persons.

Conclusion

For these reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

WEYMAN O. WILKES
Petitioner, Pro Se

APPENDIX A

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated, and no warrants shall issue, but on probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons and things to be seized.

Fourth Amendment, The Constitution of the United States.

The Supreme Court of the United States has jurisdiction to review cases in state courts by way of certiorari in three situations . . . (3) where a title, right, privilege or immunity is set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under the United States.

28 U. S. C. 1257 (3).

Any person who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this chapter, is guilty of a misdemeanor.

Section 2141, Business and Professions Code of the State of California.